IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 800 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

BAI GANGU @ GANGU

Appearance:

1. Criminal Appeal No. 800 of 1985

MR MA BUKHARI,APP for Petitioner No. 1

MR BS SUPEHIA for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 22/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. The State of Gujarat has challenged the judgment and order dated 30.1.1985 passed in Sessions Case No. 47 of 1984 by the learned Addl. Sessions Judge, Gondal acquitting the respondent accused for offences punishable under section 302 of IPC and section 37(1) and 135 of the Bombay Police Act. The accused Bai Gangu, wife of Bhikhu Jiva was tried for committing murder of her mother-in-law Jamna. The incident had taken place at 1.45 p.m. on 28.9.1984 at village Arab Timdi of Jetpur taluka when the accused assaulted deceased with broken sword causing multiple injuries. Even though the incident happened in the village itself in broad daylight, there are no eye witnesses and, therefore, the entire prosecution case is based on circumstantial evidence. The learned trial judge, after appreciating the evidence, was of the view that the prosecution has failed to establish the case against the accused beyond reasonable doubt and, therefore, acquitted the accused.

2. We have heard Mr. Bukhari, learned APP appearing for the State as well as Mr. B.S.Supehia, learned advocate appearing for the accused. We have also gone through the evidence on record.

3. Mr. Bukhari, the learned APP submitted that the prosecution has established the chain of circumstances, namely the quarrel between the accused and the deceased on the day in question, accused chasing deceased, cleaning blood stains on the weapon and lateron accused boarding the bus. He, therefore, submitted that the appeal is required to be allowed.

4. Mr. B.S.Supehia, learned advocate appearing for the accused, on the other hand, supported the judgment of the trial court in toto.

5. The prosecution, in order to establish the chain of circumstances, has mainly placed reliance on the evidence of the complainant Shambhubhai Raghavbhai, PW 2 Ex.8, Nagjibhai Gordhanbhai, PW 3 Ex.9, Bachubhai Reyabhai, PW.4 Ex10, Ravjibhai Gokalbhai, PW 6 Ex.12 and Malabhai Mayabhai, PW 7 Ex.13.

6. Shambhubhai Raghavbhai, PW 2 Ex.8 is the complainant in the instant case. He was also the Sarpanch of the village. In his evidence, he has stated that on the day in question, he was in his wadi where PW 4 Bachubhai Reyabhai came and informed that Jamna (deceased) was murdered by his daughter-in- law Gangu (accused). This witness accordingly prepared a report

and sent Nagjibhai Gordhan to Jetpur Police Station for the purpose of submitting report. This witness has also stated that from his wadi, he had gone to panchayat office. While going to panchayat office, he met Malabhai Mayabhai,PW 7 sitting at the hotel of one Rava Ratna at the outskirts of the village.PW 2 Shambhubhai inquired from PW 7 about the incident. In reply, PW 7 informed that the accused committed murder of the deceased by a sword. This witness thereafter had gone to the scene of incident where he saw the deceased lying in a pool of blood having sustained injuries on head as well as neck. In the cross examination, he has stated that when he returned from wadi, he met PW 7 and there was no talk about the incident at that time. According to him, PW 7 informed him about the incident in the panchayat office. The report sent by this witness to other police station through Peon Nagjibhai is at page 129. This being the first information report, it is stated in it that "today at about 1.45, Gangu has killed Jamna and went away in a bus and, therefore, the investigation be carried out". On the basis of the said report, FIR was lodged at Jetpur Taluka Police Station vide Ex. 35.

7. From the evidence of this witness, it appears that this witness was informed about the incident by Bachubhai Reya, PW 4 and Malabhai Mayabhai, PW 7. Bachubhai Reyabhai, PW 4, in his evidence Ex.10, has stated that at about 2.00 p.m., he had gone to the hotel of one Nathabhai where he was informed by Vajubhai that Jamna was murdered. He was also told that he being the member of the panchayat, it was his duty to inform the Sarpanch. He accordingly met PW 2 Shambhubhai and passed on the aforesaid information. He has clearly stated in his evidence that he had informed Sarpanch that Vajubhai informed him that Jamnaben was murdered; he had not stated anything further. In view of this, it is clear that he had not informed PW 2 about the accused having killed deceased Jamna. Thus, the evidence of PW 2 is not corroborated by PW 4. In other words, PW 2 had no information about the involvement of the accused in the commission of offence. Likewise, Malabhai Mayabhai, PW 7 Ex. 13, in his evidence, has clearly stated that he was called by PW 2 in the panchayat office to know about the incident. He has clearly stated that he only informed PW 2 that he came to know about the murder of Jamna. No further information was passed on by him to PW 2. In view of the evidence of PW 7, it is clear that he had also not informed PW 2 about the involvement of the accused in the offence. He had merely informed PW 2 about the murder of Jamna. In this view of the matter, we are of the opinion that PW 2, when prepared a report

about the incident for the purpose of sending it to Jetpur Police Station, did not collect any information about the involvement of the accused. PW 7, in his evidence, has stated that on the day of the incident, he was sitting in the hotel of one Rava Ratna at about 1.45 or 2.00 p.m. in the company of one Vrajlal Arjan, PW 9. He was told by PW 9 that a lady was coming having some substance in her hand. He saw the lady washing her hands in the river and thereafter boarded the bus. He identified the lady to be the wife of Bhikhabhai. He has further stated that PW 9 told him that the said substance was like a broken piece of sword and he saw the same from distance. This witness saw the lady with some substance sitting at the hotel. The distance between the hotel and the river is 200 feet which he has admitted in his cross examination. In the cross examination, he has further admitted that he saw the lady carrying in a bag, the broken sword. In our opinion, no reliance can be placed on the evidence of PW7 in view of the contradictions in his police statement regarding he having not stated that PW 9 informed him that the lady was coming with a broken sword. He has also admitted that in his police statement, he had not stated that thereafter the lady boarded the bus. In view of his own admission, he being an elderly person and the accused being a lady covering her face with her saree, and as admitted by him, till date, he having not seen the face of the accused, he could not have identified the accused washing sword in a river water and then boarding in a bus. In our opinion, the evidence of PW 7 does not help the prosecution case regarding the involvement of the accused in the incident in question.

8. Vrajlal Arjan, PW 9 Ex. 15 has tried to support PW 7 by stating that he was sitting in a hotel with Malabhai on the day in question. He has deposed that he saw the lady washing sword in river water and keeping the same in a bag. She also washed her hands and thereafter boarded in a bus. According to him, the children of the town were talking about accused Gangu. However, he did not know the name of those children. He has also stated that his brother Vagji was murdered by one Bhupat, the son of the accused. He has further stated that the accused and her husband were not having good relations and there was quarrel since two years. He has also stated that the relations between the deceased and the accused were also not cordial. Now, the evidence of this witness is also required to be rejected for the simple reason that this witness, in his cross examination, has admitted that he had not seen the face of the accused as the accused used to cover her face with saree. He is

also contradicted about he having stated in the police statement regarding the relations between the accused and her husband as also the relations between the accused and the deceased being not cordial. He has also admitted that on the day in question, he had not seen PW 2 Shambhubhai, Sarpanch of the village. In view of this admission on the part of this witness, it is clear that PW 2 could not have obtained any information from PW 7 as PW 7 was very much there with this witness PW 9. If at all PW 2 had taken PW 7 with him in the panchayat office, PW 7 must have stated the said fact in his evidence. In view of these contradictions brought out in his evidence regarding the strained relations of the accused with the deceased, the prosecution, in our opinion, has failed to establish motive for committing murder.

9. For the purpose of proving the quarrel having taken place between the accused and the deceased on the day in question, the prosecution has mainly relied upon the evidence of Ravjibhai Gokalbhai, PW 6 Ex. 12, Raniben PW 12 Ex. 16 and Hiruben Keshavbhai, PW 5 Ex.11. It may be stated that PW 10 Raniben has not supported the prosecution and was declared hostile. Hiruben, PW 5, in her evidence, has stated that on the day in question, at about 1.30 or 2.00 p.m., she was returning home after purchasing milk. She also saw Ravjibhai PW 6 drying wheat at the terrace of his house. On the road, she saw quarrel between the accused and the deceased. She also saw broken sword in the hand of the accused. This witness is an old lady of 70 years. She has admitted in her cross examination that she has no clear vision and because of the same, she was not in a position to identify anybody. She has further admitted that she did not identify either the accused or the deceased. She presumed from the voice that they may be the accused and the deceased. She has also admitted that no assault had taken place in her presence. She has further admitted that after purchasing milk from the house of Ravjibhai, she was not in a position to say as to what Ravjibhai was doing at his terrace. She has further admitted that she was not in a position to see at a distance of about 8 to 10 feet. She has further admitted that if she takes medicines, in that event, she can see up to some distance. Otherwise, she is not in a position to see anything. As she was sick on that day, she had not taken any medicine on that day. She has also admitted that on the previous day, she was informed by the police to depose in a particular way. This evidence does not require any comments as the same is self explanatory. Suffice it to say that no reliance can be placed on such type of evidence. On her own admission, she could not

have recognised either the accused or the deceased. An attempt is obviously made by the prosecution to get some corroboration regarding presence of Ravjibhai Gokalbhai PW 6, from the evidence of this witness who according to her, was on his terrace and was also watching the quarrel between the accused and the deceased. Once it is clearly deposed by this witness that she was not in a position to recognise anybody even from the short distance, she could not have seen PW 6 standing on the terrace. In any case, no reliance can be placed on the evidence of this witness. Likewise, the evidence of PW 6 Ravjibhai Gokalbhai also will not be helpful to the prosecution. In his evidence, he has stated that at about 2.00 p.m. on the day in question, while he was in his terrace drying wheat, he saw the accused chasing deceased. He has admitted that he saw both of them from the distance of 150 to 200 feet. He has not seen the deceased thereafter and he did not know as to what happened to the deceased thereafter. He has admitted that the distance of terrace from the 'deli' portion of his house is about 35 feet. He has also admitted that the terrace is covered by parapet having height of about three feet. He has also admitted that he was drying wheat in sitting position. If that was so, we have got our own doubt as to his witnessing the incident. For the purpose of seeing the incident, one has to rise and thereafter see and that too particularly when the incident had taken place at a distance of about 250 feet. The evidence of this witness and the evidence of Hiruben, PW 5 run contrary to each other inasmuch as, as per the evidence of PW 5, this witness PW 6 was standing and watching the incident while this witness, in his evidence, has stated that he was in a sitting position. As per the say of PW 5, the accused and the deceased were quarrelling while as per the say of this witness PW 6, he saw the accused chasing the deceased without there being any quarrel. Thus, in view of the contradictory evidence, we are of the opinion that the so-called circumstance, namely the quarrel between the accused and the deceased on the day in question will not lead us to conclude that the accused was responsible for committing murder of the deceased.

10. Regarding the circumstance of accused boarding the bus after the incident, the prosecution has relied upon the evidence of bus conductor Nathalal Chavda, PW 8 Ex. 14. He was the conductor of a bus plying on the route Jetpur to Bavapipdi. According to him, the bus starts from Jetpur for Bavapipdi at about 12.45 p.m. and reaches Bavapipdi via Arab Timdi. The return journey takes place from Bavapipdi to Jetpur at about 2.30 p.m. According to him, on that day, he had 12 passengers i.e.

5 female and 7 male passengers. He has stated that he cannot identify as to whether the accused was there in the bus on that day or not. This witness PW 8 does not throw any light regarding the accused having boarded the bus.

11. One more witness Manilal Vashram, PW 14 Ex.27 is examined. He is also a conductor of a private bus run by Darbar Dadabhai Nanjibhai. He has stated that he being the resident of village Vadiya, he knows the accused Gangu Bhikha of village Vadiya. According to him, the accused boarded the bus at 5.00 p.m. This witness has been confronted with his police statement wherein he has admitted that he had not stated in his police statement that he knew the accused Bai Gangu. Assuming that the accused boarded the bus in which this witness was conductor, even as per the say of this witness, she boarded at about 5.00 p.m. which is not consistent with the say of other prosecution witnesses as it is the positive case of prosecution and all prosecution witnesses that they saw the accused boarding the bus at 1.45 or 2.00 p.m. Therefore, in our opinion, from the evidence of this witness, it is not established beyond reasonable doubt that the accused boarded the bus in which this witness was the conductor.

12. From the above discussion, it is clear that the prosecution, in the instant case, has failed to establish the chain of circumstance which would lead to one and the only conclusion regarding involvement of the accused in the commission of offence. Therefore, even if the prosecution has established from the medical evidence of Dr. Vasavda, PW 11 Ex. 18 who performed postmortem of the deceased that the deceased died homicidal death, it has failed to establish the involvement of the accused in the commission of murder of the deceased. The motive alleged against the accused, in our opinion, does not lead us anywhere. We are, therefore, in total agreement with the reasonings and the ultimate conclusion recorded by the learned trial judge acquitting the respondent accused. Apart from that, this being an acquittal appeal, this Court would be slow in disturbing the judgment unless it is established that the two views are possible. We, therefore, hardly see any reason to interfere with the judgment and order passed by the trial court.

13. There being no substance in this appeal, it is dismissed. Bail-bonds stand cancelled.

(Kshitij R.Vyas,J.)

(Kamal M.Mehta,J.)

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